

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 2ND MARCH 2007 / 11TH PHALGUNA 1928

CrL.MC.No. 3990 of 2006()

**(AGAINST THE ORDER IN C.M.P NO.8807 OF 2006 IN CRIME NO.364 OF 2006 OF
THE JUDICIAL MAGISTRATE OF IST CLASS , MAVELIKKARA(CRIME NO. 364 OF
2006 OF THE NOORANADU POLICE STATION)**

PETITIONER:

**T.K. BABU, S/O. KUNJUKUNJU,
AGED 59 YEARS, RESIDING AT MAMPALLIPURATH
PANTHALAM VILLAGE, MUDIYOORKONAM P.O.,
DIST.PATHANAMTHITTA.**

BY ADV. SRI.K.RAMAKUMAR

RESPONDENTS: STATE & ACCUSED:

- 1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.**
- 2. GEORGE, S/O.SAMUEL,
KIZHAKKE ATTATHU VEEDU, VETTIYAR MURI,
VETTIYAR VILLAGE, MAVELIKKARA TALUK,
ALAPPUZHA DISTRICT.**

**BY PUBLIC PROSECUTOR SRI.S.U.NAZER
SRI.K.HARILAL
SRI.R.GOPAN**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 02/03/2007,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

R.BASANT .J

CrI.M.C No. 3990 of 2006

Dated this the 2nd day of March 2007

ORDER

The petitioner is the father of the defacto complainant in a crime registered under section 307, 452 and 506 (1)I.P.C. He is aggrieved by Annexure-A order passed by the learned Magistrate granting bail to the first accused in the crime.

2. There is bitter acrimony between the parties and there is no dispute on that aspect at all. The accused had approached this Court for an order of anticipatory bail in an earlier crime registered under section 436 I.P.C. This Court had directed that the accused must appear before the investigating Officer at 10 A.M on 6-11-2006 ; that the investigating Officer after interrogation of the accused must produce him before the court below according to law and that the Magistrate must grant bail imposing such conditions as may be deemed necessary by the learned Magistrate. The accused were directed to appear before the Investigating Officer on 6-11-2006. That order was passed on 2-11-2006. The petitioner appeared before the Investigating Officer on 6-11-2006. By then another crime-crime in the instant case, had been registered against the petitioner alleging that he has committed the offence in question on 30-10-2006 at 7 P.M. The

accused was arrested by the Investigating Officer and produced before the learned Magistrate late in the night. The learned Magistrate found that the allegation were raised against the accused not only for the offence under section 436 but also for a fresh case had been registered inter alia under section 307 of the I.P.C. The learned Magistrate was not happy that the accused was not produced at the belated hour before him at his residence and explanation was sought for. The explanation does not appear to have been satisfactory to the learned Magistrate. The learned Magistrate released the accused on bail for the offence under section 436 of the I.P.C. In the crime in the instant case interim bail was granted with direction to the accused to appear before the court on the next morning i.e 7-11-2006. Notice was given. Arguments were heard on the question of grant of bail and the interim bail granted earlier was confirmed by the impugned order- an unusually and unnecessary long one a copy of which is produced as Annexure-A. The accused was directed to be released on bail subject to certain conditions.

3. The learned counsel for the petitioner submits that the learned Magistrate has erred grossly and perversely in granting interim bail for such a grave offence which is exclusively triable by the court of sessions and at any rate the grant of regular bail under Annexure-A order is totally

unjustified. The counsel laments that the learned Magistrate has undertaken an exhaustive and detailed consideration of the disputed questions. The learned Magistrate had forgotten the fact that he is not expected to weigh the evidence in golden scales at that stage of the proceedings. He had unnecessarily proceeded to make various observations overlooking and without verifying even the nature of the serious injuries suffered by the victim. Bail has been granted for an offence exclusively triable by the court of Sessions. It is prayed that the order granting bail may be set aside and the accused may be called back into custody.

4. I have heard the learned counsel for the petitioner and the accused as also the learned Public Prosecutor. To quench my doubts the case diary was directed to be produced. I have perused the same. At this stage of the proceedings I must scrupulously avoid any detailed expression of opinion on merits which is likely to send unintended signals to the investigating officer or the Courts which may be called upon later to consider the matter. But I do find substance in the grievance raised by the learned counsel for the petitioner that there was unnecessary hurry shown by the learned Magistrate in granting interim bail and in perhaps considering the question of grant of bail in such meticulous details after detailed evaluation of the acceptability of the materials placed before the

Court.

5. I say so, because going through the impugned order one can has the feeling that the learned Magistrate has embarked on a meticulous and detailed evaluation and consideration of various circumstances. This is certainly not expected from the learned Magistrate at this stage of grant of bail . I do further note that the learned Magistrate had proceeded to grant bail without and before having an idea about the nature of the injuries that have been suffered by the victim. The discharge certificate which is available in the case diary shows that the victim had suffered the following two injuries

(a) Incised Wound 12 x 8 x 3 an ulnar aspect of left forearm cutting ulnar Artery ulnar Nerve and muscle bether of flexor carpi ulnars & flexor carpi radialis

(b) Incised Wound 3 x 2 x 1 an over posterior aspect of left forearm. Treated by surgical repair of ulnar nerve , ligation of ulnar Artery, repair of muscle of FCU, FCR and anterior transposition of ulnar nerve

6. The anxiety of the learned Magistrate is perhaps understandable because the circumstances shows that the accused who had been granted anticipatory bail subject to conditions by this Court was accused of another different offence also and the arrest was shown in such different crime which was not referred to by this Court while granting

anticipatory bail. The learned Magistrate also appears to have been perturbed by the possibility of the police officers acting against the accused with objectionable motives. The learned Magistrate also appears to have noted the incongruity between the F.I. Statment and the further statement which shows that there was a transformation of the allegation. It was alleged in the further statement that the accused was actually present at the time of the infliction of injuries proper. That does not appear to be the specific version in the F.I. Statement. In the case diary it was alleged that the accused had actually taken part in the incident proper and had attempted to inflict injuries. Care and caution was certainly justified . But such meticulous and detailed consideration, discussion and evaluation of acceptability of materials was not called for in a bail application . The conduct of the learned magistrate of releasing the accused on interim bail and later in making that order absolute without and before seeing the medical certificate to ascertain the nature of the injury is also not satisfactory.

7. I must now allegedly note that a period of about three and a half months has elapsed from the date of the order granting bail. If the order were cancelled the petitioner will have to be directed to be in custody . Considering all the relevant inputs I am satisfied that though the

course adopted by the learned Magistrate does not appear to me to be ideal it is not necessary to direct the cancellation of bail and the remand of the accused in custody at this stage. There is no allegation of any contumacious conduct on the part of the accused subsequent to his release on bail. Of course I am satisfied that further conditions must be imposed on the petitioner to allay the apprehensions aired by the petitioner.

8. In the result this Crl.M.C. is allowed in part. I do not proceed to cancel the bail granted but I direct that the bail shall be subject to the following further conditions.

(i) The petitioner shall execute a fresh bond for Rs. 50,000/- with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate. Fresh bond shall be executed within a period of ten days from this date

(ii) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 A.M. and 12 noon on all Mondays and Fridays until the final report is filed or until further orders.

(iii) The petitioner shall not enter the jurisdiction of Nooranad police station until further orders except for the purpose of complying with the condition No.1 above.

R.BASANT, JUDGE

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